

Rule 62. Stay Of Proceedings To Enforce A Judgment.

(a) Automatic Stay; Exceptions. Except as otherwise ordered by the court, no execution or enforcement proceedings shall issue on any judgment or decree until after the expiration of ten (10) days from the entry thereof. Unless otherwise ordered by the court, an interlocutory or final judgment in an action for an injunction or in a receivership action shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal. The provisions of subdivision (c) of this rule govern the suspending, modifying, restoring or granting of an injunction during the pendency of an appeal.

(b) Stay on Motion for New Trial or for Judgment. In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution or any proceedings to enforce a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to Rule 59, or of a motion for relief from a judgment or order made pursuant to Rule 60, or of a motion for judgment in accordance with a motion for a directed verdict made pursuant to Rule 50, or of a motion for amendment to the findings or for additional findings made pursuant to Rule 52(b).

(c) Injunction Pending Appeal. When an appeal is taken from an interlocutory or final judgment granting, dissolving or denying an injunction, the court from which the appeal is taken, in its discretion, may suspend, modify, restore or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.

(d) Stay Upon Appeal. When an appeal is taken, the appellant by giving a supersedeas bond may obtain a stay subject to the exceptions contained in subdivision (a) of this rule, and except as to child custody orders and similar orders. The bond may be given at or after the time of filing the notice of appeal. After an appeal has been docketed in the appellate court, application for leave to file a bond may be made only in such court.

(e) Stay in Favor of State or an Agency Thereof. When an appeal is taken by the State of Arkansas or an officer or agency thereof and the operation or enforcement of the judgment is stayed, no bond, obligation or other security shall be required from the appellant.

(f) Power of Appellate Court Not Limited. The provisions of this rule do not limit any power of the appellate court to stay proceedings during the pendency of an appeal, or to suspend, modify, restore or grant an injunction during the pendency of any appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

(g) Stay of Judgment as to Multiple Claims or Parties. When a court has ordered a final judgment under the conditions stated in Rule 54(b), the court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

omission of certain provisions which are inapplicable to state practice, Rule 62 is substantially the same as FRCP 62.

2. Section (a) omits the reference in FRCP 62 to patent disputes and combines the language of superseded Ark. Stat. Ann. 30-102 (Repl. 1962) and that of the Federal Rule. This rule does not change prior Arkansas practice concerning the enforcement of judgments. Under both Arkansas and federal law, execution or other enforcement of a judgment or decree is automatically stayed for a ten day period unless specifically directed by the trial court. *Whetstone v. Atlas Drilling & Production Co.*, 241 Ark. 387, 409 S.W.2d 322 (1966) and *FDIC v. Steinman*, 53 F. Supp. 644 (D.C. Pa., 1943). Under the Federal Rule, the ten day stay is more or less mandatory and the trial court is given little discretion to waive such period. The Committee recognized that there are situations, however, where execution or other enforcement should not be delayed; therefore, Rule 62 was drafted so as to retain the trial court's discretion to waive this ten day period.

3. Section (a) does work one minor change in prior Arkansas practice. Under superseded Ark. Stat. Ann. 30-102 (Repl. 1962), no action could be taken within ten days after rendition of the judgment unless otherwise ordered by the court. Such language permitted the execution on a judgment even before it was actually filed. Under Rule 62, no action can be taken until ten days after the entry or filing of the judgment or decree unless ordered by the court.

4. The portion of Section (a) dealing with stays and appeals in cases involving interlocutory orders and injunctions is substantially the same as superseded Ark. Stat. Ann. 27-2102 (Repl. 1962). Under that statute and the Federal Rule, such proceedings are not stayed unless otherwise ordered by the court.

5. Section (b) is identical to its counterpart in FRCP 62. There was no specific provision under prior Arkansas law to stay an execution or other enforcement proceedings during the pendency of post-judgment motions and it was doubtful that a trial court had the power to stay execution beyond the ten-day period normally allowed. *Taylor v. O'Kane*, 185 Ark. 782, 49 S.W.2d 400 (1932). Thus, this rule confers upon the trial court power which it did not apparently have under prior law.

6. With the exception of the omission of the last sentence in FRCP 62(c), Rule 62 is otherwise identical to the former. The omitted provision simply has no applicability to state practice. There was no specific authority under prior Arkansas law which permitted an injunction during an appeal and this rule does add such authority. This authority is discretionary, however, and generally requires a finding that the applicant is likely to succeed on appeal; that irreparable harm will result unless it is granted and that no substantial harm is likely to result to the other party. *Belcher v. Birmingham Trust Nat. Bank*, 395 F.2d 685 (C.C.A. 5th, 1968), *Bauer v. McLaren*, 332 F. Supp. 723 (D.C. Iowa, 1971).

7. Section (d) is a modified version of FRCP 62(d) and basically follows prior Arkansas law as codified in superseded Ark. Stat. Ann. 27-2119, et seq. (Repl. 1962) and should not work any changes in Arkansas practice and procedure.

8. Section (e) is revised from the Federal Rule so as to make it compatible with state practice. This section follows prior Arkansas law which did not require the posting of a bond or other security in order to stay proceedings pending an appeal prosecuted by the State of Arkansas. Superseded Ark. Stat. Ann. 34-215 (Repl. 1962). It is, however, incumbent upon the State, or its officers or agents, to cause the trial court to specifically stay the proceedings even though

security is not required.

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Rules of Civil Procedure

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VII. Judgment

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